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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/054,681	11/13/2001	Douglas M. Dillon	PD-N96045D	5266

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PATENT DOCKET ADMINISTRATION RE/R11/A109
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EXAMINER	
PAN, DANIEL H	

ART UNIT	PAPER NUMBER
2183	

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/054,681	DILLON ET AL.	
	Examiner	Art Unit	
	Daniel Pan	2183	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *04/26/02,11/13/01*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *34-53* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☒ Claim(s) *48-53* is/are allowed.

6)☒ Claim(s) *34-47* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *13 November 2001* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *11/13/01*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

1. Claims 34-53 are presented for examination. Claims 1-33 have been canceled.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claim 34 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,321,268. Although the conflicting claims are not identical, they are not patentably distinct from each other because although patented claim 1 did not specifically recite the satellite and dial-up , nor the IP as claimed , it would have been obvious to one of ordinary skill in the art to include the satellite and dial-up as claimed because one of ordinary skill in the art should be able to recognize the high speed and low speed paths were applicable in satellite and dial-up links, respectively, as the satellite link was already had greater data bandwidth than the dial-up, and as for the IP, since no specific format of IP has been reflected into the claim, and since patented claim 1 already taught a data packet in a network environment, one of ordinary skill in the art should be able to recognize a

general IP with no specific format should also be applicable in the network in order to enhance the processing options, and in doing so, provided a motivation.

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3. Claims 39,44,45 ,46 ,47 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,115,750. Although the conflicting claims are not identical, they are not patentably distinct from each other because although patented claim 1 did not specifically recite the satellite and dial-up as claimed, it would have been obvious to one of ordinary skill in the art to included the satellite and dial-up because the satellite link already had greater data bandwidth than the dial-up , and one of ordinary skill in the art should be able to recognize the high speed and low speed paths were applicable in satellite and dial-up links, respectively, in order to enhance the processing options,

4. As to claims 46,47, the patented claim 1 did not recite specifically the TCP data amount (claim 46) and bit rate (claim 47) as clamed. However, the same patented claim 1 recited a TCP port with the feature of the traffic characteristics and the congestion condition (see patented claim 1 , item b) and e), since the TCP port was used and since the congestion was detected, it would have been obvious to one of ordinary skill in the art to reasonably recognize the data amount could also be applied as a condition for the congestion for TCP port based on the teaching of the traffic characteristics (patented claim 1 (f)). As to the bit rate in claim 47, knowing data amount, the bit rate could obtained by Speed = data amount /time. The examiner believes that this is a general principle known by anyone, and no discussions should be

made in this Office action unless more detailed calculation of the data rate are being reflected into the claim.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claims 34-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kitamura et al. (62221228, see also the attached English Abstract) in view of Anattasion et al (5,371,852).

6. As to claims 34-38, disclosed a system for retrieving data from a source computer in a network comprising at least :

a) an interface [IF] for connecting an apparatus (see the core structure of terminal 2) to a satellite receiver [COV] providing a satellite link to a network (see the network channels in fig.1);

b)an interface to a modem (not explicitly shown, see terminal 2 's internal connection of the MCPU with modem [MODM] in fig.1) , the modem [MODM] providing a dial-up link to a network (see the switched line 3 in fig.1).

7. Kitamura did not specifically disclosed the selecting between the satellite link and dial-up link based on the IP header as claimed. However, Attanasion disclosed a system including a selecting means for selecting between the destination ports based on the IP header address (see the message switching for designating the destination path or port in 11, lines 1-37). It would have been obvious to one of ordinary skill in the art to use Attanasion in Kitamura for selecting the satellite and the dial-up links as claimed because the use of Attanasio could increase the adaptability of Kitamura to switch to a specific connection structure based on a IP header, therefore increasing the adaptability of the transmission control in Kitamura, and because Kitamura already showed the satellite link in addition to the dial up (the switched line) to increase the transmission speed , therefore, one of ordinary skill in the art should be able to recognize the alternative path between the satellite and dial-up in Kitamura would have a suggestion for a need of a selecting means, such as switching or selecting, in order to achieve the higher transmission in speed, and in doing so, provided a motivation.

8. As to claims 39, Kitamura did not specifically show the transport level port number as claimed. However, Attanasion disclosed transport level port (see the port number of protocol layers in figs.4, 10) . It would have been obvious to one of ordinary skill in the art to use Attanasion in Kitamura for including the transport level port as claimed because the use of Attanasion could provide additional port option into Kitamura's system, thereby expanding the processing structure of Kitamura, and it could be readily done by predefining the port number of Attanasion into the

configuration file of Kitamura with modified access variables , such as the port data width and data type, so that the transport level port number of Attanasion could be recognized by Kitamura, and for the above reasons , provided a motivation.

9. As to claims 40-42, Attanasion also included the TCP/UDP port (e.g. see fig.10[410 TCP UDP]).

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

10. Claims 43,44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kitamura in view of Amundson et al. (4,680,781) .

11. As to claims 43,44, Kitamura disclosed a system for retrieving data from a source computer in a network comprising at least :

a) an interface [IF] for connecting an apparatus (see the core structure of terminal 2) to a satellite receiver [COV] providing a satellite link to a network (see the network channels in fig.1);

B)an interface to a modem (not explicitly shown, see terminal 2 's internal connection of the MCPU with modem [MODM] in fig.1) , the modem [MODM] providing a dial-up link to a network (see the switched line 3 in fig.1).

12. Kitamura did not specifically show the switch to the dual up link in response to the loss of the satellite link (claim 43) or the congestion (claim 44) as claimed. However, Amundson disclosed a system for selecting one of a low path [low speed

modem] and high path [high speed modem] according to the traffic condition of the transmission path (e.g. see col.6, lines 6, lines 49-66, col.7, lines 1-11). It would have been obvious to one of ordinary skill in the art o use Amundson in Kitamura for switching to the dial up in response to the loss or the congestion of the satellite link as claimed because the use of Amundson could provide the ability of Kitamura to adapt to an alternate routing in case of the abnormal conditions, such as the loss and the contention channel, therefore providing the capability for eliminating the delay or the restart cycle.

13. Claims 45-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kitamura in view of Shwed (5,606,668)

14. As to claims 45-47, the UDP is being understood as the datagram used in the switched line. Kitamura did not specifically show the switching to the dial up in response to the UDP (claim 45) , the TCP limit (claim 46), or the bit rate (claim 47) as claimed . However, Shwed disclosed system including a selection of plurality of transmission services, such as the UDP, TCP, and data rate , based on the system requirement (e.g. see fig.3C [TCP][UDP] , col.5, lines 6-21, see also col.4, lines 43-38 for background of data flow control). It would have been obvious to one of ordinary skill in the art to use Shwed in Kitamura for including switching to the dial up in response to the UDP, TCP, and bit rate as claimed because the use of Shwed could provide Kitamura the control capability to adjust to a different transmission format connecting to the system, and therefore providing greater compatibility of the system, and because

Kitamura already recognized at least one of the different conditions (e.g. the speed) in two different transmission services, such as the satellite link and the regular transmission switched line, therefore suggesting the need for including a method of a selection based on the different service conditions in order not to interrupt the transmission process, and therefore, provided a motivation.

15. Claims 48-53 are allowable over the art of record. None of the prior art of record teaches the combined features of the conditions of the selections of the wireless and data rate links based on one of the IP header, the TCP/UDP port number, the loss of the wireless link, the congestion of the low wireless link, the packet data was UDP packet, and the amount of TCP data exceeding a limit.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dan Pan whose telephone number is 703 305 9696, or the new number 571 272 4172. The examiner can normally be reached on M-F from 8:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chan, can be reached on 703 305 9712, or the new number 571 272 4162. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

21 Century Strategic Plan

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